

REMARKS

Claims 1-42 are pending. No claims have been amended, added or cancelled.

Request for Suspension

A Request for Suspension was timely filed on March 3, 2003. The Examiner denied the request in a communication mailed with the Office Action. Because the Examiner relied upon incorrect facts, the Examiner is requested to reconsider and grant the Request.

The Request was made to allow prosecution of several related application to proceed prior to further prosecution of this Application. The Request also stated that prosecution of this Application at this time is an undue financial hardship on the Assignee of the Application.

The Examiner summarily denied the Request. According to the Examiner, "An applicant for patent may file and prosecute his or her own application, and thus act as his or her own representative (pro se) before the Office." While this is generally correct, it is not correct with respect to this Application. The sole named inventor, Terry Warren, has no rights in the Application.

On August 3, 2000, Mr. Warren assigned all of his rights in the Application to NetZero, Inc. ("NetZero"). The assignment was recorded at Reel 011034, frame 0559. On August 3, 2000, NetZero executed a Statement of Ownership under 37 CFR 3.73(b). Because the Assignment was attached to the Statement of Ownership, the Statement of Ownership was recorded with the Assignment. Both the Statement of Ownership and the Assignment were filed with the Application. The Statement of Ownership states, "The authority and rights of the inventor(s) with respect to this application are hereby excluded . . ." Thus, at no time could Mr. Warren file or prosecute this Application, as suggested by the Examiner. The only party with any rights is NetZero, and it was only NetZero's situation (not Mr. Warren's) that is relevant in deciding the Request.

Because the Examiner's denial of the Request was based upon his incorrect belief that the inventor could act in this Application, the denial was incorrect.

The undersigned further wishes to bring to the Examiner's attention the grant of a substantially identical Request by the same Assignee in Application No. 09/628,971. In that application, Special Programs Examiner Pinchus Laufer -- an expert in such matters at the Patent and Trademark Office -- approved the Request.¹ Accordingly, when the Examiner reconsiders the Request, it is suggested that he make a determination consistent with that of Examiner Laufer.²

Drawings

The Draftsman objected to Figure 2 under 37 CFR § 1.84. Substitute formal drawings are being mailed separately.

Claim Rejections - 35 USC § 103

The Examiner rejected claims 1-42 under 35 USC § 103 as obvious from Sutcliffe et al (USP 6,253,216) in view of Brown et al. (USP 6,026,368). This rejection is respectfully traversed.

Because the Request for Suspension should have been granted, it is requested that the Examiner withdraw the final rejection of the claims and hold this in abeyance until after the suspension is lifted.

Conclusion

The Examiner is invited to call the undersigned attorney to answer any questions.

Respectfully submitted,

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Steven C. Sereboff, Reg. No. 37,035

SoCal IP Law Group

¹ Examiner Meng An signed the approval, but the Request was directed to Examiner Laufer who saw to it that Examiner An approved the Request.

² The denial served an especially harsh situation upon the Assignee. The Assignee, lulled into believing that the Examiner would be consistent with other examiners, requested suspension for financial reasons. Instead of receiving the expected relief, the Examiner instead further burdened the Assignee with a final Office Action. Though the undersigned does not believe that the Examiner intended to be cruel, his denial of the Request results in a cruelty upon the Assignee.

310 N. Westlake Blvd., Suite 120
Westlake Village, CA 91362
Telephone: 805/230-1350 x22
Facsimile: 805/230-1355
email: info@socalip.com